IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 2878 of 2007()

CC.268/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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PETITIONER:

PRAKASH NAIK, S/O.VITTAL NAIK,
AGED 32 YEARS, SAMANWAYA,
VADAKKANTHARA, PALAKKAD, NOW RESIDING AT SOOLU
HOUSE, PARD, KASARAGOD.

BY ADV. SRI.KRISHNADAS P. NAIR
SRI.HARIDAS P.NAIR
SMT.K.L.SREEKALA
SRI.M.A.VINOD
SRI.M.RAJESH KUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2878 of 2007

Dated this the 13th day of September 2007

O R D E R

The petitioner was arrayed as the 8th accused in a prosecution for offences punishable under Sections 323 and 324 read with 149 I.P.C. Altogether there were eight accused persons. When the matter came up for trial, the petitioner was not available. Case against him was split up and is pending as C.C.No.268/2001. The co-accused were all found not guilty and acquitted. The petitioner alone now remains to face the trial.

2. The learned counsel for the petitioner submits that the dispute between the parties have been settled. The complainant is willing to file an application for composition. In the light of these circumstances, proceedings against the petitioner may be quashed, it is prayed.

3. Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] is authority for the proposition that the mere fact that the co-accused have been found not guilty and acquitted on the basis of the evidence adduced in the trial against them is no reason for an absconding co-accused to claim any benefit or advantage. The petitioner must therefore certainly face trial. The mere fact that the co-accused have been acquitted cannot absolve him of the responsibility or liability to face trial.

4. The learned counsel for the petitioner submits that all the compoundable offences have been compounded. In the light of the acquittal of the co-accused, charges for other offences are not liable to be framed. In these circumstances, it is prayed that the petitioner may be permitted to appear before the learned Magistrate and apply for composition and to discontinue/stop the proceedings in so far as the other offences are concerned under Section 258 Cr.P.C.

5. I am satisfied that the said request must certainly be considered by the learned Magistrate. No special or specific directions appear to be necessary.

6. In the result, this Criminal Miscellaneous Case is allowed in part. It is directed that the learned Magistrate shall consider the request of the petitioner to accept the composition of the offence punishable under Sections 323 and 324 I.P.C. If such composition of the compoundable offence is accepted, the learned Magistrate must consider the prayer of the petitioner that the other allegations against him are now liable to be dropped and proceedings are liable to be stopped under Section 258 Cr.P.C in view of the specific finding rendered in favour of the other co-accused in the trial held against them.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007